

Financial Management Course
11 U.S.C. §§ 727 and 1328
BR Act Section 106

The Act mandates that individuals filing under chapters 7 and 13 must complete an approved financial management course (subject to exceptions set forth below) in order to receive a discharge.

- I. The court shall not grant a discharge under § 727(a)(11) or § 1328 (g)(1) if the debtor fails to complete an approved instructional course concerning personal financial management.
 - A. The list of agencies approved to conduct financial management courses will be compiled by the United States Trustee (UST) or Bankruptcy Administrator (BA). These entities, and not the clerk, have sole responsibility for determining what is an “approved” credit counseling service. In addition, the clerk will not be responsible for ensuring that the financial management course was conducted by an approved service (an objection to this may be raised by the trustee or other third party.)
 - B. There are specific exceptions to this requirement, including:
 - 1. if the debtor is unable to complete the financial management requirement as a result of incapacity or disability; or
 - 2. if the debtor is on active military duty in an active combat zone; or
 - 3. if the UST or BA has determined that adequate financial management services are not available in the district.
 - C. Clerk’s Duties to Insure Compliance
 - 1. Recommendation - Court could either set a deadline for the filing of a certification of compliance or send a reminder to debtor regarding financial management requirement, possibly after period for objection to discharge has expired.
 - 2. A private flag can be incorporated into the Auto-Discharge program so that the discharge is not issued unless the certificate of completion of financial management course is filed.
 - 3. If the debtor fails to submit the required certification regarding financial management, the court should close the case without the discharge being

granted.

- a. There will be a new statistical code for courts to use to indicate that the case was closed without a discharge being granted (as opposed to “discharge denied”.)
- b. The debtor can subsequently move to reopen the case to request that the discharge be granted. The fee to reopen the case must be charged.

NOTE: Section 105 of the Act mandates that the Executive Office for United States Trustees develop a financial management curriculum to be used as a pilot in six judicial districts for 18 months, starting no later than 270 days after enactment of the Act.

Notwithstanding the pilot program, the general requirements of the Act regarding financial management apply to all cases filed on or after October 17, 2005. This means that the financial management course will be required before a discharge can be granted in any case filed after that date.